

## APPEAL NO. 010278

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 22, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that he did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury; and that the respondent (carrier) did not waive its right to dispute compensability by not contesting in accordance with Section 409.021. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. There was conflicting evidence on the issue of whether the claimant sustained a compensable injury as the result of a fall at work on \_\_\_\_\_. The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies against the claimant and in determining that the claimant did not sustain his burden of proving that he sustained a compensable injury. Our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

In his appeal, the claimant asserts error in the hearing officer's Conclusion of Law No. 3, which states that the carrier did not waive its right to dispute compensability under Section 409.021. However, at the hearing, the parties stipulated that the carrier timely disputed compensability of the claim. (Transcript p. 15.) Accordingly, we find no merit in the assertion that the hearing officer erred in entering a conclusion of law consistent with the parties' factual stipulation.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge